

**Honorable City Planning Commission
Cincinnati, Ohio**

May 5, 2006

SUBJECT: A report and recommendation on authorizing the grant of a permanent easement within the Fifth Street right-of-way to Starwood Cincinnati CBBS I, LLC for the encroachment of a building, which interest is not needed for any municipal purpose.

BACKGROUND:

Starwood Cincinnati CMBS I, LLC (Starwood) is the owner of the Westin Hotel. Starwood is leasing 8,000 square feet of space to a restaurant. Starwood has requested a permanent easement to extend part of the Westin Hotel façade into the right-of-way for the new restaurant. A check in the amount of \$5,000, the appraised fair market value of the requested easement, has been deposited with the City Treasurer.

This ordinance is needed to allow the construction of the restaurant in the current construction season, thereby allowing the enhancement of the Central Business District, and the area around the newly renovated Fountain Square at the earliest possible time.

RECOMMENDATION:

Department of Community Development and Planning staff recommend that City Planning Commission take the following action:

AUTHORIZE the grant of a permanent easement within the Fifth Street right-of-way to Starwood Cincinnati CBBS I, LLC for the encroachment of a building which interest is not needed for any municipal purpose.

APPROVED:

Respectfully submitted,

Margaret A. Wuerstle, AICP
Chief Planner

Jennifer K. Walke
City Planner

EMERGENCY

City of Cincinnati

D.M. for J.M.
D.N.C.

An Ordinance No. _____

- 2006

AUTHORIZING the grant of a permanent easement within the Fifth Street right-of-way to Starwood Cincinnati CMBS I, LLC for the encroachment of a building, which interest is not needed for any municipal purpose.

WHEREAS, the City of Cincinnati is the owner of Fifth Street between Vine and Walnut Streets ("Fifth") in the Central Business District; and

WHEREAS, Starwood Cincinnati CMBS I, LLC ("Starwood") is the owner of the Westin Hotel (the "Westin"); and

WHEREAS, Starwood is leasing 8,000 square feet of space to a restaurant, and has petitioned the City to purchase a permanent easement (the "Easement") within Fifth in order to be able to extend part of the Westin façade for the new restaurant; and

WHEREAS, the City Manager, being the officer having custody, supervision and management of Fifth has determined that the space to be occupied by the Easement is not needed for any municipal purpose and has recommended that the Easement be sold to Starwood; and

WHEREAS, Starwood has deposited \$5,000.00, the appraised fair market value of the Easement, with the City Treasurer; and

WHEREAS, at its meeting on _____, the City Planning Commission approved the sale of the Easement to Starwood; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

SECTION 1. That the following described permanent easement within City-owned Fifth Street is not needed for any municipal purpose:

EASEMENT FOR BUILDING ENCROACHMENT: An easement for the construction, maintenance, repair, occupancy and reconstruction of part of a building situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Situated in Section 18, Township 4, Fractional Range 1, City of Cincinnati, Township of Cincinnati, County of Hamilton, State of Ohio, and being part of the existing public right-of-way of Fifth Street (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Hamilton County Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing at the intersection of the existing east right-of-way of Vine Street and the existing south right-of-way of Fifth Street; Thence North 81°10'30" East, leaving the existing east right-of-way of Vine Street, along the existing south right-of-way of Fifth Street for a distance of 15.00 feet to the **TRUE PLACE OF BEGINNING** for the easement herein described; Thence leaving the existing south right-of-way of Fifth Street along the proposed easement line for the revocable street permit the following three (3) courses:

- 1) North 36°10'30" East for a distance of 12.02 feet;
- 2) North 81°10'30" East for a distance of 68.00 feet;
- 3) South 8°49'30" East for a distance of 8.50 feet to the existing south right-of-way of Fifth Street;

Thence South 81°10'30" West, leaving the proposed easement line along the existing south right-of-way of Fifth Street for a distance of 76.50 feet to the place of beginning.

SECTION 2. That the Easement shall be in favor of the property owned by Starwood Cincinnati CMBS I, LLC known as The Westin Hotel.

SECTION 3. That the Easement shall be subject to the following conditions which shall run as covenants with the land and be binding upon Starwood Cincinnati CMBS I, LLC, and its successors in title:

- a. Starwood must review, and if necessary upgrade, sidewalk gratings to meet current standards, including skid-resistance, maximum opening width (3/8"), and Americans with Disabilities Act requirements.
- b. Starwood must coordinate the construction of the building encroachment with the Fountain Square renovation project.
- c. Starwood must maintain access to existing utilities.

SECTION 4. That the City Manager, being the officer having custody, supervision and management of Fifth, is hereby authorized to sell the Easement to Starwood Cincinnati CMBS I, LLC for \$5,000.00, the fair market value of the Easement as determined by an appraisal performed by Real Estate Services.

SECTION 5. That it is in the best interest of the City of Cincinnati to sell the Easement without competitive bidding because Starwood Cincinnati CMBS I, LLC is the only abutter and the only party capable of using such Easement.

SECTION 6. That this ordinance is an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the need to convey the Easement without delay so that the construction of the restaurant may be completed in the current construction season, thereby allowing the enhancement of the Central Business District, and the area around the newly-renovated Fountain Square at the earliest possible time.

Passed: _____, 2006

Mayor

Attest: _____
Clerk